



TEXAS DEPARTMENT OF CRIMINAL JUSTICE

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James A. Collins
Executive Director

May 23, 1995

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The Honorable Dan Morales

Attorney General of Texas

Price Daniel Sr. Building

P.O. Box 12548, Capitol Station Opinion Committee

Austin, Texas 78711

Attention:

Sarah J. Shirley

Chair, Opinion Committee

STS
FILE # 01-33913-95

Dear General Morales:

I.D. # 33913

The Texas Department of Criminal Justice requests your opinion regarding the extent to which our agency must conduct audits of the construction and operation of facilities and programs funded with monies ordered to be paid by the State of Texas, through our agency, in accordance with the judgment rendered in Alberti v Sheriff of Harris County, et al., In the United States District Court for the Southern District of Texas - Houston Division, Civil Action No. H-72-1094. As part of the final order rendered in the above - styled and numbered cause, the State of Texas, pursuant to an agreed proposed joint plan and through our agency, paid an initial \$34 million to Harris County. Harris County in turn forwarded these funds to the Harris County Community Supervision and Corrections Department (HCCSCD) for the following purposes:

- 1) \$3 million was paid starting in June 1992 in order to provide an additional 1,000 super-intensive probation slots (SIPP);
- 2) \$11 million was paid starting in December 1992 in order to expand existing alternative sanctions programs, referred to as Community Corrections Program (CCP); and
- 3) \$20 million was paid starting in September 1992 in order to construct two (2) 500 bed intermediate sanction facilities (ISFs).

Since paying this initial sum, the Legislature has continued to appropriate and our agency has continued to pay, as part of the Alberti judgment, \$11 million each year for CCP beginning in December, 1993 and \$20 million each year for the operation of the two ISFs beginning in March, 1994.

The Texas Department of Criminal Justice has received a request from the Harris County District Attorney's Office to conduct an audit of the planning and construction of the intermediate sanctions facility known as the "Baker Street" facility. See attached letter from Mr. Chuck Noll to our office dated April 12, 1995. This facility was constructed by the HCCSCD

as part of the terms of the Alberti judgment. This request for an audit was based on complaints received by the Harris County District Attorney's Office regarding the process utilized to select the construction company for the ISF as well as the construction process itself. Nevertheless our agency has grave reservations concerning whether we are the proper entity to conduct such an audit.

The authority of our agency to conduct audits of local community supervision and corrections departments (CSCDs) stems from two provisions in the law. Article 42.13, Section 10, Code of Criminal Procedure, authorizes the Texas Department of Criminal Justice, through the community justice assistance division (CJAD), to distribute state aid to local CSCDs.¹ In addition, Article 42.13, Section 2(a) provides that the CJAD shall propose and the Texas Board of Criminal Justice shall adopt reasonable rules establishing minimum standards for programs, community corrections facilities and other facilities, equipment, and other aspects of the operation of CSCDs.² Finally Article 42.13, Section 4, Code of Criminal Procedure permits our agency, through the CJAD, to inspect and evaluate a CSCD or conduct audits of financial records to determine compliance with the CJAD's rules and standards.

A second provision allowing our agency to conduct audits is found in V.T.C.A., Government Code, Chapter 2102 (the Texas Internal Auditing Act). This Act requires our agency to establish an internal auditing division that is independent of the operational and management responsibility of the agency. In addition this Act specifies that the internal auditor shall conduct economy and efficiency audits and program result audits as directed by the state agency's governing board. See Government Code, Section 2102.007. The internal audit division of the Texas Department of Criminal Justice has interpreted the Internal Auditing Act as allowing for the conducting of audits of local CSCDs for the purpose of ascertaining the propriety of expenditures made with State funds.

Our agency performs a variety of audits, including financial audits, compliance audits, performance audits, special audits, and investigative audits. Nevertheless it has consistently been the position of this agency that we can only conduct audits in order to further the statutorily mandated responsibilities of this agency, i.e., to ensure that standards are complied with and to account for the expenditure of state aid. The funding for the construction of the Baker Street ISF was made in accordance to a court order. The State of Texas and this agency had no choice regarding whether this particular project would be funded; nor had the State or this agency any control in the manner in which the facility was constructed. In addition this court order specified that the State through this agency is to continue to pay \$20 million per year for the operation of the ISF. Consequently it would appear that the State is obligated to fund the operation of this ISF, regardless of the quality of the programs and services offered at the facility and regardless of whether the facility is in compliance with agency standards.

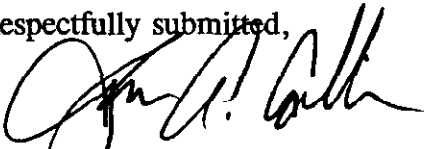
Since it would appear that the Baker Street ISF need not comply with agency standards and the agency has no control over the expenditure of funds for the facility, the only arguable reason to conduct an audit of the facility would be for informational purposes, e.g., an audit of the programs at the Baker Street ISF might be beneficial in more fully evaluating the performance of other CSCD programs, services and facilities for which the agency has the responsibility for regulating. The request that our agency has received from the Harris County

District Attorney's Office is to conduct an investigative audit in order to determine whether the HCCSCD committed some unspecified impropriety in the planning and construction of the Baker Street ISF.³ Such an investigative audit would not appear to further any purpose for which this agency has a legitimate interest and would seem unlikely to affect the State's obligation to continue to satisfy this judgment. Moreover we would like to emphasize that the monies in question were initially paid to Harris County. Harris County proceeded to forward the monies to HCCSCD for the planning and construction of the Baker Street ISF. Thus the Harris County District Attorney Office is requesting that we conduct an audit on a governmental entity for the expenditure of funds for which the entity was answerable not to our agency directly but to another governmental entity.

Therefore, our agency would ask that you address whether the Texas Department of Criminal Justice has the authority to conduct an investigative audit of the planning and construction of the Baker Street ISF.

I look forward to receiving your response to this request at your earliest convenience. If I or my staff can provide any further assistance to you in answering this request, please do not hesitate to contact this office.

Respectfully submitted,



James A. Collins, Executive Director
Texas Department of Criminal Justice

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1. Article 42.13, Section 1 (b)(5), Code of Criminal Procedure, states that "state aid" means funds appropriated by the legislature to the CJAD to provide financial assistance to:

- 1) judicial districts, for:
 - a) the administration of community supervision and corrections departments;
 - b) the development and improvement of community supervision services and community-based correctional programs;
 - c) the establishment and operation of community corrections facilities; and
 - d) assistance in conforming with standards and policies of the CJAD and the Texas Board of Criminal Justice; and
- 2) state agencies, counties, municipalities, and nonprofit organizations for the implementation and administration of community-based sanctions and programs.

2. The authority for the establishment of standards regulating community correction facilities in this state is more fully set out in Article 42.13, Section 5, Code of Criminal Procedure.

3. Although the letter we received from the District Attorney's Office requests that our agency conduct a "fiscal" audit of the planning and construction of the Baker Street ISF, it seems apparent from the context of the letter that the District Attorney's Office is asking us to investigate whether the HCCSCD committed some misfeasance or malfeasance in the planning and construction of the facility.